



MISSOURI DEPARTMENT OF REVENUE
DIVISION OF TAXATION
TRANSIENT EMPLOYER GUIDELINES

FORM
3032
(REV. 10-2002)

Effective August 13, 1988, out-of-state employers who temporarily transact any business in the state of Missouri are defined as transient employers and are required to register, file a bond, and remit withholding tax to the Missouri Department of Revenue.

I. TRANSIENT EMPLOYER DEFINED

Transient employer means an employer as defined in 143.191, 287.030, and 288.032 RSMo, making payment of wages taxable under the Missouri Income Tax Law, the Workers' Compensation Law, and the Missouri Employment Security Law, who is not domiciled in the state of Missouri and who temporarily transacts any business within the state. Domicile is defined as the place where the center of the business affairs and functions are discharged. Transient employer does include professional athletic teams and professional entertainers.

II. TRANSACTION OF BUSINESS DEFINED

The transaction of business shall be considered temporary at any time Missouri income taxes are not withheld for a period of at least twenty-four **consecutive** months.

III. WITHHOLDING OF INCOME TAX

Transient employers are required to register and withhold income tax on the wages paid to employees working in Missouri pursuant to Section 143.191, RSMo.

IV. TRANSIENT EMPLOYER BOND

A transient employer must file a bond with the Missouri Department of Revenue unless they meet the exemption criteria listed in VIII. The amount of bond shall not be less than the average estimated quarterly withholding and unemployment tax liabilities of the employer and in no case less than \$5,000 nor more than \$25,000.

Estimating the Bond:

a) Missouri Withholding Tax

Monthly gross wages _____ x 6% = _____ x 3 = _____ (a)

b) Missouri Unemployment Tax

Average No. of Workers _____ x \$7,000.00 = _____ x 3.38% = _____
_____ ÷ 4 = _____ (b)

(a) _____ + (b) _____ = _____ (Minimum \$5,000.00)
(BOND)

V. WORKER'S COMPENSATION INSURANCE

A transient employer must certify to the Director of Revenue that they have adequate workers' compensation insurance. If such certification is not made an additional financial assurance instrument will be required in an amount not less than \$100,000.00 nor more than \$500,000.00.

VI. TYPES OF ACCEPTABLE TRANSIENT EMPLOYER BONDS

A bond may be in the form of a surety bond, cash bond, certificate of deposit, or irrevocable letter of credit issued by any state or federal financial institution, or any other bond deemed acceptable by the Director of Revenue. The bond must be filed on forms provided by or approved by the Department of Revenue.

VII. PENALTY PROVISIONS

A transient employer commits a class A misdemeanor if he fails to comply with the bonding requirements. Section 560.021, RSMo, provides that a corporation found guilty of failing to file a bond may be fined up to \$5,000 or any higher amount not

exceeding twice the amount the employer profited from the commission of the offense.

Failure to register with the Department of Revenue and file the bond, prior to beginning the performance of any contract, shall prohibit the employer from performing on such contract until he complies. In addition, any employer who fails to file a bond shall be prohibited from contracting for or performing labor on any public works project in this state for a period of one year. The employer may also be subject to writ of attachment or other injunctive relief.

Also, if a transient employer fails to file the required bond, the contracting entity must escrow 20% of the total labor costs or ten percent of the total contract amount for the payment of Department of Revenue, Workers' Compensation and Employment Security tax liabilities. The penalty for failure to escrow one or the other of these amounts is:

Political Subdivision - will be ineligible to receive state funds for public works projects for a period of one year.

Private Entity - must assume all state withholding tax, workers' compensation, and employment security tax liabilities of the contractor resulting from the transient employers' contract with the private entity.

VIII. NOTICE OF REGISTRATION

A Notice of Registration will be issued by the Missouri Department of Revenue to each transient employer that has complied with the transient employer registration requirements.

The notice is valid for one year and must be renewed each year prior to its expiration. It must be posted in a prominent and easily accessible place at the worksite. Failure to do so can result in a penalty of \$500.00 per day.

The Department of Revenue recommends that the transient employer present a copy of the Notice of Registration to the contracting entity to verify that the transient employer has completed the registration requirements. If the notice is not presented to the contracting entity, a portion of the total contract amount shall be placed in escrow as stated in Section VI.

IX. EXEMPTION CRITERIA FROM TRANSIENT EMPLOYER BONDING REQUIREMENT.

Employers meeting all three of the following criteria shall not be required to file a bond:

- A. The principal place of business of the out-of-state employer must be in a county which borders the state of Missouri; and
- B. The employer must have been under contract to perform work in the state of Missouri for at least sixty (60) days each year for the past two calendar years; and
- C. The employer must obtain a tax clearance issued by the Missouri Department of Revenue stating that the employer has complied with the tax laws of this state and with the provisions of the workers compensation and employment security laws.

X. CEASING BUSINESS

Whenever a transient employer ceases activity in Missouri, they must notify the Director of Revenue in writing ten days prior to the time activity will cease.

(CONTINUED ON BACK)



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Missouri law requires all transient employers to file a financial assurance instrument in the form of a cash bond, a surety bond, certificate of deposit, or an irrevocable letter of credit issued by any state or federal institution. Exemption criteria is listed in Section VIII of the Transient Employer Guidelines. The financial assurance instrument must be in an amount representing the average estimated quarterly Missouri withholding and unemployment tax liabilities of the employer but in no case less than \$5,000 or more than \$25,000. The transient employer shall be the principal obligor and the state of Missouri shall be the obligee. The financial assurance instrument will be conditioned upon the prompt filing of true reports and withholding taxes which are now or which may be levied or imposed by the state of Missouri. Listed below is information necessary for filing the financial assurance instrument.

CASH BOND

1. Fully complete the cash bond form.
2. It must be signed by the owner/partner/corporate officer and notarized.
3. Forward a cashier's check or money order with the cash bond form. **PERSONAL OR COMPANY CHECKS ARE NOT ACCEPTABLE.**

SURETY BOND

1. A surety bond must be issued by an insurance company licensed for bonding with the state of Missouri.
2. It must be on the form provided by the state of Missouri.
3. It must bear the seal of the insurance company.
4. It must bear the effective date.
5. It must be signed by the attorney-in-fact and the owner/partner/corporate officer with original signatures.
6. It must be accompanied by the power of attorney letter.
7. It must be the original bond and not a copy.

CERTIFICATE OF DEPOSIT

1. The Certificate of Deposit must be issued by a state or federally chartered financial institution.
2. The Certificate of Deposit must be issued in the name of the Missouri Department of Revenue AND the owner, all partners, or corporation name or limited liability company name.
3. It must be accompanied by the "Transient Employer Assignment of Certificate of Deposit" form provided by the Missouri Department of Revenue which must be completed by the financial institution.
4. The Certificate of Deposit must be endorsed or accompanied by a signed withdrawal slip.
5. The actual Certificate of Deposit, "Transient Employer Assignment of Certificate of Deposit" and a copy of the signature card must be forwarded with the registration application.
6. It must be issued not less than 24 months.

IRREVOCABLE LETTER OF CREDIT

1. The letter of credit must be on the form provided by the state of Missouri.
2. It must state the owner's name.
3. It must state the amount of the credit and the effective date.
4. It must be signed by a bank official and notarized.
5. It must be accompanied by an "Authorization for Release of Confidential Information" form which must be signed by the owner/partner/corporate officer and notarized.

ADDITIONAL BONDS

A transient employer may be required to file an additional financial assurance instrument should they become delinquent in paying taxes, or tender a check in payment of tax which is returned unpaid because of insufficient funds. The penal sum of the additional financial instrument and the instrument furnished may not exceed two quarters of estimated tax liability.